Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1995

L. P. PATTERSON, et al., *Petitioners,*

v.

NATIONSBANK OF TEXAS, N.A., et al., *Respondents.*

consolidated with

L. P. PATTERSON, et al., *Petitioners,*

v.

BANK ONE, TEXAS, N.A., et al., *Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI, APPENDIX

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NATIONSBANK TEXAS, et al.

Plaintiffs-Appellees,

v.

L. P. PATTERSON, et al.,

Defendants-Appellants.

consolidated with

No. 94-11130

BANK ONE TEXAS, et al.

Plaintiffs-Appellees,

v.

L. P. PATTERSON, et al.,

Defendants-Appellants.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-10993

Appeals from the United States District Court
for the Northern District of Texas

(3:93-CV-1107-G & 3:93-CV-1081-G)

Before POLITZ, Chief Judge, WISDOM and STEWART, Circuit Judges.

PER CURIAM:*

L. P. Patterson, et al., appeal the grant of adverse summary judgment in these consolidated matters. Having considered the briefs and oral arguments of counsel and pertinent parts of the record, and finding neither error nor abuse of discretion, the judgments appealed are AFFIRMED.

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* Local rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

BANK ONE, TEXAS, N.A., et al.,
Plaintiffs,

v.

L. P. PATTERSON, et al.,
Defendants.

No. 3:93-CV-1081-G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

September 9, 1994

MEMORANDUM ORDER

Before the court is the motion for summary judgment of plaintiffs Bank One Texas, N.A., Harvey Mitchell, and Ronald Steinhart.[1] Also before the court is the defendants'[2] motion for summary judgment.[3] For the reasons stated below, the plaintiffs'

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[1] Plaintiff Harvey Mitchell ("Mitchell") is the Chairman of Bank One Texas, N.A. ("Bank One") and plaintiff Ronald Steinhart ("Steinhart") is its President. Complaint and Application for Temporary Restraining Order ¶¶ 2-3.

For convenience, Bank One, Mitchell, and Steinhart will be referred to collectively as the "plaintiffs."

[2] The defendants are the following member of the Texas House of Representatives' Committee on Agriculture and Wildlife Management: L.P. Patterson, Charles Finnell, Elton Bomer, Renato Cuellar, Bernard Erickson, Allen Hightower, Mary Denny James, Jerry Johnson, Bob Rabuck, David Swinford, and Bob Turner. For Convenience, they will be referred to collectively as the "Committee" or the "defendants."

[3] Also, the United States and the Texas Bankers Association have filed briefs as amici curiae, which have been duly considered.

motion for summary judgment is granted and the defendants' motion for summary judgment is denied.

I. BACKGROUND

On May 24, 1993, the Committee issued the legislative subpoenas (the "subpoenas") as issue in this case. Complaint and Application for Temporary Restraining Order (the "complaint") ¶18; *id.* - Exhibits A & B. The subpoenas purport to require Mitchell and Steinhart to give testimony in a "hearing regarding lending practices toward agricultural and small business interests in rural and urban Texas." *Id.* - Exhibits A & B.

On June 4, 1993, the plaintiffs filed the instant action alleging that the subpoenas violate federal law. *See* Complaint ¶¶18, 26, 32, and 34. Subsequently, the parties agreed that the validity of the subpoenas is a question appropriate for disposition as a matter of law and that the matter should be presented to the court by way of cross-motions for summary judgment. *See* Order dated June 15, 1993.

II. ANALYSIS

Plaintiffs assert that the Committee's subpoenas violate federal law, specifically, 12 U.S.C. § 484 ("§ 484").[4] A state law

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[4] Section 484 provides:

§ 484. Limitation on visitorial powers

(a) No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or as such shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

(b) Notwithstanding subsection (a) of this section, lawfully authorized State auditors and examiners may, at

cannot stand when it "conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiencies of these agencies of the federal government to discharge the duties for the performance of which they were created." *Davis v. Elmire Savings Bank*, 161 U.S. 275, 283 (1896). That is, "national banks are subject to state laws, unless those laws infringe the national banking laws or impose an undue burden on the performance of the banks' functions." *Anderson National Bank v. Luckett*, 321 U.S. 233, 248 (1944).

An interpretive ruling issued by the Office of the Comptrolier of the Currency (the "OCC") regarding § 484 is central to this court's analysis. According to the OCC,

> The exercise of visitorial powers over national banks is vested in the Comptroller of the Currency. See 12 U.S.C. 484. Other officials, including state banking officials, have no authority to conduct examinations or to inspect banks, except for the limited purpose of ensuring compliance with applicable State unclaimed property and escheat laws. State authority to review the books and records of a national bank is limited to those circumstances in which there is reasonable cause to believe that the bank has failed to comply with such laws. . . .

12 C.F.R. § 7.6025 ("§ 7.6025") (1993).

Because Congress has not "directly spoken to the precise question at issue", i.e., whether the subpoenas involved in this case constitute an exercise of visitorial

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reasonable times and upon reasonable notice to a bank, review its records solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws.

powers within the meaning of § 484, the court must determine whether the OCC's interpretive ruling regarding § 484 "is based on a permissible construction of the statute." *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984). *See Department of Banking and Consumer Finance of State of Mississippi v. Clarke*, 809 F.2d 266, 269 (5th Cir.), *cert. denied*, 483 U.S. 1010 (1987) (a court must "uphold the Comptroller's determination if [it is found] to be a 'permissible construction' of the National Bank Act") (citations omitted); *Clarke v. Securities Industry Association*, 479 U.S. 388, 403-04 (1987).[5] Further, "[t]he court need not conclude that the agency construction was the only one it permissibly could have adopted to uphold the construction, or even the reading the court would have reached if the question initially had arisen in a judicial proceeding." *Chevron*, 467 U.S. at 843 n. 11 (citations omitted).[6]

After careful review, the court has concluded that the Comptroller's construction of § 484 is a permissible one. The court has also determined that the subpoenas at issue are

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[5] The Court stated:

> It was settled that courts should give great weight to any reasonable construction of a regulatory statute adopted by the agency charged with the enforcement of that statute. The Comptroller of the Currency is charged with the enforcement of banking laws to an extent that warrants the invocation of this principle with respect to his deliberative conclusions as to the meaning of these laws.

Clarke v. Securities Industry Association, 479 U.S. 388, 403-04 (1987) (quoting *Investment Company Institute v. Camp*, 401 U.S. 617, 626-27 (1971)).

[6] The defendants' challenge to the applicability of this standard of deference is wholly unpersuasive. *See* Defendants' Reponse to Plaintiffs' Motion for Summary Judgment and Cross Motion for Summary Judgment at 15-17.

clearly within the purview of § 484 and § 7.6025. First, the subpoenas contemplate the production, examination, and inspection of the books and records of Bank One. See Complaint at Exhibits A & B; § 7.6025. Second, the subpoenas are concerned with Bank One's lending practices toward agricultural and small business interests in rural and urban Texas, Exhibits A & B to the Complaint, not with "ensuring compliance with applicable State unclaimed property and escheat laws." § 484; § 7.6025. Thus, the subpoenas constitute an attempt to exercise visitorial powers within the meaning of § 484 and would, if enforced, violate the law.[7] The plaintiffs are therefore entitled to a permanent injunction prohibiting enforcement of the subpoenas at issue.

III. CONCLUSION

For the reasons stated, the plaintiffs' motion for summary judgment is **GRANTED** and the defendants' for summary judgment is **DENIED**.

Within fifteen days of this date, counsel for the plaintiffs shall submit a proposed form of judgment consistent with this memorandum order.

SO ORDERED.

September 9, 1994.

/s/

A. JOE FISH
United States District Judge

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[7] To have any meaning, this ruling must also necessarily preclude the taking of testimony regarding the documents puportedly subject to the subpoenas.

1993 WL 740918

(OCC Interpretive Letter, June 3, 1993)

Comptroller of the Currency

Administrator of National Banks

Washington, D.C. 20219

June 3, 1993

Steven Alan Bennett
General Counsel and Secretary
Bank One, Texas, NA
1600 Pacific Avenue
Dallas, Texas 75201

Dear Mr. Bennett:

This is in response to your letter of May 28, 1993, asking for our opinion concerning certain subpoenas issued by the Agriculture Committee of the Texas House of Representatives. The subpoenas seek detailed information relating to the lending policies and practices of your Bank, to be found in the books and records and related materials of the Bank.

For the reasons given below, it is our firm conclusion that this represents an attempted exercise of visitorial powers by the state authorities which conflicts with and is therefore preempted by 12 U.S.C. 484, the federal statute which specifies and limits the circumstances wherein the books and records of national banks may be examined.

National banks are federal instrumentalities, created for a public purpose, and subject to paramount federal law. *See*, e.g., *First Nat. Bank v. Dickinson*, 396 U.S. 122 (1969); *Davis v. Elmira Savings Bank*, 161 U.S. 275 (1896). National banks must generally comply

with state laws but only to the extent that those laws do not conflict with federal law or regulation, frustrate the purposes for which national banks were created, or impair their efficiency in the discharge of their statutory duties. *Davis v. Elmira Savings Bank*, 161 U.S. 275 (1896); *Anderson Nat. Bank v. Luckett*, 321 U.S. 233 (1944). The conflict with federal law posed by the state subpoenas in the situation under discussion is clear and direct.

Ever since the passage of the National Bank Act in 1864, Congress has included an express statement narrowly restricting outside access to information contained in the internal files and reports of national banks. The limitation on visitorial powers is now contained in 12 U.S.C. 484, which provides:

> (a) No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.
>
> (b) Notwithstanding subsection (a) of this section, lawfully authorized State auditors and examiners may, at reasonable times and upon reasonable notice to a bank, review its records solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws.

Notice that the exercise of visitorial powers must be authorized by federal law.

The Office of the Comptroller of the Currency ("OCC") has issued Interpretive Ruling 7.6025(b), 12 C.F.R. 7.6025(b), which explains the visitorial powers limitation as follows:

> (b) Visitorial powers. The exercise of visitorial powers over national banks is vested in the Comptroller of the

> Currency. See 12 U.S.C. 484. Other officials, including state banking officials, have no authority to conduct examinations or to inspect or require the production of books or records of national banks, except for the limited purpose of ensuring compliance with applicable State unclaimed property and escheat laws. State authority to review the books and records of a national bank is limited to those circumstances in which there is reasonable cause to believe that the bank has failed to comply with such laws. Federal law provides special procedures for verifying payroll records for unemployment compensation purposes (26 U.S.C. 3305(c)), for enforcing the Fair Labor Standards Act (29 U.S.C. 211), and for ascertaining the correctness of Federal tax returns (26 U.S.C. 7602).

The concept of visitation embodied in 12 U.S.C. 484 has been described as an act of a superior examining into a corporation's conduct of its business, an action of "inspection; superintendence; direction; regulation." *First Nat. Bank of Youngstown v. Hughes*, 6 F. 737, 740 (C.C. Ohio 1881), appeal dismissed 106 U.S. 523. *See also Peoples Bank v. Williams*, 449 F. Supp. 254 (W.D. Va. 1978) (visitorial powers involves the exercise of the right of inspection, superintendence, direction, or regulation over a bank's affairs); *National State Bank v. Long*, 630 F.2d 981 (3d Cir. 1980) (visitorial powers include the inspection or review of a bank's books and records).

The clearest expression concerning the exclusive nature of the visitorial powers conferred on the OCC appears in *Guthrie v. Harkness*, 199 U.S. 148 (1905):

> The right of visitation being a public right, existing in the state for the purpose of examining into the conduct of the corporation with a view to keeping it within its legal powers, Congress had in mind, in passing this section, that in other sections of the law it had made full and complete provision for investigation by the Comptroller of the Currency and

> examiners appointed by him. . . . It was the intention that this statute should contain a full code of provisions upon the subject, and that no state law or enactment should undertake to exercise the right of visitation over a national corporation. Except insofar as such corporation was liable to control in the courts of justice, this act was to be the full measure of visitorial power.

The validity of this interpretation was reiterated in *Kelly v. Harrisburg Nat. Bank*, 44 Dauphin Co. Rep. 174, 30 D. & C. 535 (1937), and in *National State Bank v. Long*, 630 F.2d 981 (3d Cir. 1980). In *Kelly v. Harrisburg Nat. Bank*, the state court held that the Pennsylvania Secretary of Revenue could not examine certain records of a national bank to determine the tax liability of its customers because the relation between the bank and its depositors is confidential and "the character of the examination demanded ... would seem to constitute the exercise of visitorial power prohibited by Congress."

In *National State Bank v. Long*, the Third Circuit Court of Appeals reviewed the applicability of New Jersey's anti-redlining statute to national banks. While the court held that the nondiscrimination requirements were not preempted by federal law, it invalidated the enforcement, subpoena, and supervisory powers granted to the New Jersey Banking Commissioner as applied to national banks. The OCC, it said, possessed the exclusive authority to examine for compliance with the state law.

There have been instances when investigations through the use of subpoena power into the affairs of a national bank by government agencies other than the OCC have been upheld against a challenge brought under 12 U.S.C. 484. With one exception, however, these cases involved a federal government agency engaged in law enforcement activities authorized by Congress. *Bank of America Nat. Trust & Savings Ass'n v. Douglas*, 105 F.2d 100 (D.C. Cir. 1939); *Bowles v. Shawano Nat. Bank*, 151 F.2d 749 (7th Cir. 1945); and *Peoples Bank v. Williams*, 449 F. Supp. 254 (W.D. Va. 1978).

The exception was *Minnesota v. First Nat. Bank of St. Paul*, 313 N.W.2d 390 (S.Ct. Minn. 1981), a state court decision supporting a state agency's proposed examination of national bank records, discussed in detail below.

Bank of America and *Peoples Bank* both addressed investigations by the Securities and Exchange Commission into alleged securities law fraud, and *Bowles* enforced a subpoena issued by the Price Administrator seeking records of four depositors at a national bank during World War II. In *Bowles* the court found that the subpoena for bank depositor records involved an exercise of visitorial powers authorized by law, by Congress, and by the court, each of which was a basis for inquiry permitted by the terms of 12 U.S.C. 484. *Bank of America* and later *Peoples Bank* concluded not only that the SEC was engaged in permissible investigatory activities, but also that its request for records in the circumstances outlined did not constitute the exercise of visitorial powers. This was effectively dictum since in any event the SEC's investigation was one "authorized by law", which would satisfy the requirements of 12 U.S.C. 484.

Minnesota v. First Nat. Bank of St. Paul, the decision mentioned above which allowed the State Treasurer to review national bank records to determine the bank's compliance with the state's unclaimed property law, stands as an anomoly. The court concluded that the Treasurer's limited investigation was not an exercise of visitorial powers within the meaning of 12 U.S.C. 484 that Congress intended to preempt. In response to this 1981 decision, Congress the following year revised 12 U.S.C. 484 in two ways.

Until 1982 the statute had permitted the exercise of visitorial powers "as authorized by law". In 1982 Congress revised the statute to read "as authorized by Federal law", to clarify that only Congress, and not the states, could create exceptions to the OCC's exclusive visitorial powers with respect to national banks. Secondly, the Congress added 12 U.S.C. 484(b) as a new subsection, authorizing state officials in specified circumstances to review a bank's records if there was reasonable cause to believe that the bank had failed to

comply with the state's unclaimed property or escheat laws. This action demonstrated that the Congress, contrary to the court in *Minnesota v. First Nat. Bank of St. Paul*, considered a review of bank records, even for a narrow or specific law enforcement purpose, to amount to an exercise of visitorial powers.

In sum, we do not believe that the Bank is required to comply with the subpoenas in question. This attempted exercise of visitorial power by local officials is not "authorized by Federal law", conflicts with the express terms of 12 U.S.C. 484, as historically interpreted and particularly as amended in 1982, and is incompatible with the comprehensive scheme of federal supervision and examination of national banks administered by the OCC.

I trust that this reply is responsive to your inquiry.

Sincerely yours,

/s/
William P. Bowden, Jr.
Chief Counsel

1993 WL 639366

(OCC Interpretive Letter 616, February 26, 1993)

February 26, 1993

This letter responds to your request for a legal opinion regarding whether federal law would preempt the state filing requirement found at chapter 140, section 114C of the Massachusetts statutes as applied to national banks. This section requires credit card issuers to report quarterly, to the Massachusetts Commissioner of Banks, the finance charge rate and other fees charged to Massachusetts cardholders during the quarter, as well as the conditions under which a finance charge may be imposed. [FN1] For the reasons discussed below, I agree that the reporting requirement in this statute is preempted by federal law.

The Office of the Comptroller of the Currency ("OCC") is authorized by federal law to appoint examiners to examine all national banks. 12 U.S.C. § 481. In addition, section 484(a) of Title 12, United States Code, ensures that: No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

The section continues by granting one exception -- that State auditors and examiners may review a national bank's records solely to ensure compliance with applicable State unclaimed property or escheat laws, but only upon reasonable cause to believe that the bank has failed to comply with such laws. 12 U.S.C. § 484(b). Another provision of federal banking law specifically allows parties other than representatives from the OCC to inspect books or records of a national bank. 12 U.S.C. § 62. This section relates to the rights of shareholders, creditors, and certain tax officials to inspect

the list of shareholders of a bank. See also 12 C.F.R. § 7.6025. Section 8(t) of the Federal Deposit Insurance Act (12 U.S.C. § 1818(t)) provides the Federal Deposit Insurance Corporation with back-up enforcement authority against insured depository institutions, including national banks. Other provisions of Federal law provide limited instances wherein national banks must follow special procedures to make available employment information for verifying payroll records for unemployment compensation purposes, 26 U.S.C. § 3305(c), for enforcing the Fair Labor Standards Act, 29 U.S.C. § 211, and for ascertaining the correctness of Federal tax returns, 26 U.S.C. § 7602. See 12 C.F.R. § 7.6025. The few specific, narrow exceptions to the visitation prohibition in 12 U.S.C. § 484(a) evidence an intent by Congress that the OCC exercise nearly exclusive visitorial powers upon national banks. The fact that the states have no general authority to examine the books, records and assets of national banks is further supported by 12 U.S.C. § 92a(c), which expressly permits state authorities a limited right of access to reports of examination prepared by the OCC relating to trust activities of national banks.

The term "visitation" has been expansively defined to include any act of a superintending official to inspect, regulate, or control the operations of a bank to enforce the bank's observance of the law. *First National Bank of Youngstown v. Hughes*, 6 F. 737, 740 (6th Cir. 1881), appeal dismissed, 106 U.S. 523 (1883). Although there may be no comprehensive definition of "visitorial" powers, they certainly include the examination of a bank's books and records. *National State Bank, Elizabeth, N.J. v. Long*, 630 F.2d 981 (3d Cir. 1980). Furthermore, state-law-required registrations and investigations of national banks are "visitations" and, therefore, are preempted by federal law as an unauthorized state attempt to superintend or regulate a national bank's activities. See Letter from James F.E. Gillespie, Jr., Senior Attorney, Legal Advisory Services Division (Aug. 11, 1986) (unpublished).

The Massachusetts statute requiring card issuers to provide information to the Commissioner of Banks is a form of visitation by state authorities upon national banks issuing credit cards to residents

of the state. Based on well- established preemption principles, in my opinion, the Massachusetts statute in question is preempted by 12 U.S.C. § 484. Although national banks cannot be compelled to submit disclosures to the Commissioner of Banks, no statute, regulation or policy of the OCC would prohibit a bank from providing the information voluntarily if the bank's board of directors decides that it is in the bank's best interest to do so.

Similar types of disclosure requirements, imposed by states on national banks, have been addressed by OCC staff interpretive letters in the past. These letters also concluded that such provisions were preempted by federal law and not applicable to national banks; however, national banks could voluntarily comply. See, e.g., Letter from Mitchell G. Stern, Senior Attorney, Central District (June 26, 1989) (unpublished) (Wisconsin law requiring national banks to submit information regarding the total amount of consumer credit that the banks finance constitutes a visitation under 12 U.S.C. § 484); Letter from John G. Heimann, Comptroller of the Currency (Dec. 11, 1978) (unpublished) (Michigan statute requiring periodic reporting of lending practices preempted by 12 U.S.C. § 484 and the Home Mortgage Disclosure Act of 1975); Letter from John E. Shockey, Acting Chief Counsel (July 14, 1976) (unpublished) (Massachusetts law requiring mortgagees, who under state law must pay interest on mortgage escrow accounts, to report annually to the Commissioner of Banks the amount of net profit or loss from the investment of such accounts is inapplicable to national banks based on 12 U.S.C. § 484); Letter from Robert Bloom, Chief Counsel (May 16, 1975) (unpublished) (Proposed Florida legislation requiring financial institutions to report the interest rate charged by them to state officials for the purpose of setting an interest rate ceiling would likely not be applicable to national banks pursuant to 12 U.S.C. § 484).

I trust this reply is responsive to your request.

Sincerely,

William B. Glidden, Assistant Director
Bank Operations and Assets Division

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The Massachusetts statute states, in pertinent part: A card issuer shall report quarterly to the commissioner the finance charge rate expressed as an annual percentage rate and the amount of any annual or other fee charged during the preceding quarter to its cardholders and the conditions under which a finance charge may be imposed, including the time period within which any credit extended may be repaid without incurring a finance charge. Mass. Ann. Laws ch. 140, § 114C (Law. Co-op. 1992). A "card issuer" is defined at section 1 of chapter 140D as "any person who issues a credit card, or the agent of such person with respect to such card." Mass. Ann. Laws ch. 140D, § 1 (Law. Co-op. 1992). A "person" is defined as "a natural person or an organization." Id. It is apparent that the literal language of the statute would include national banks that issue credit cards.

TEXAS GOVERNMENT CODE

§ 301.024. Process

(a) A general investigating committee may issue process to compel the attendance of witnesses and the production of books, records, documents, and instruments required by the committee. Any other committee may issue process if authorized by the resolution creating the committee or the rules of procedure of the creating house. A committee may issue process to a witness at any place in this state.

(b) A committee chairman shall issue in the name of the committee all subpoenas and other process as directed by the committee.

(c) If necessary to obtain compliance with a subpoena or other process, a committee may issue writs of attachment.

(d) All process may be addressed to and served by any peace officer of this state or by the sergeant at arms appointed by the committee.

(e) A witness who attends a committee proceeding or a proceeding of either house under process is entitled to the same mileage and per diem as a witness who appears before a grand jury in this state. Mileage and per diem are paid from that house's contingent expense fund or from the contingent expense fund of the committee conducting the proceeding.

UNITED STATES CODE
12 U.S.C. § 92a(c)

§ 92a. Trust powers

* * * *

(c) Segregation of fiduciary and general assets; separate books and records; access of State banking authorities to reports of examinations, books, records, and assets

National banks exercising any or all of the powers enumerating in this section shall segregate all assets held in any fiduciary capacity from the general assets of the bank and shall keep a separate set of books and records showing in proper detail all transactions engaged in under authority of this section. The State banking authorities may have access to reports of examination made by the Comptroller of the Currency insofar as such reports relate to the trust department of such bank, but nothing in this section shall be construed as authorizing the State banking authorities to examine the books, records, and assets of such bank.

* * * *

UNITED STATES CODE
12 U.S.C. § 484

§ 484. Limitation on visitorial powers

(a) No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

(b) Notwithstanding subsection (a) of this section, lawfully authorized State auditors and examiners may, at reasonable times and upon reasonable notice to a bank, review its records solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws.

UNITED STATES CODE
12 U.S.C. § 485

§ 485. Examination of Federal reserve banks

The Board of Governors of the Federal Reserve System shall, at least once each year, order an examination of each Federal reserve bank, and upon joint application of ten member banks the Board of Governors of the Federal Reserve System shall order a special examination and report of the condition of any Federal reserve bank.

CODE OF FEDERAL REGULATIONS
12 C.F.R. § 7.6025 (1993)

§ 7.6025 Books and records of national banks.

(a) Inspection. The only provision of Federal banking law authorizing persons other than the Comptroller of the Currency or his authorized representatives to inspect books or records of a national bank is contained in 12 U.S.C. 62, relating to the right of shareholders, creditors, and certain tax officials to inspect the list of shareholders of a bank. Production of records may, however, be required under normal judicial procedures.

(b) Visitorial powers. The exercise of visitorial powers over national banks is vested in the Comptroller of the Currency. See 12 U.S.C. 484. Other officials, including state banking officials, have no authority to conduct examinations or to inspect or require the production of books or records of national banks, except for the limited purpose of ensuring compliance with applicable State unclaimed property and escheat laws. State authority to review the books and records of a national bank is limited to those circumstances in which there is reasonable cause to believe that the bank has failed to comply with such laws. Federal law provides special procedures for verifying payroll records for unemployment compensation purposes (26 U.S.C. 3305(c)), for enforcing the Fair Labor Standards Act (29 U.S.C. 211), and for ascertaining the correctness of Federal tax returns (26 U.S.C. 7602).

(c) Reports of examination. The report of examination made by an examiner selected by the Comptroller of the Currency is designated for use in the supervision of the bank. The bank's copy of the report is the property of the Comptroller of the Currency and is furnished to the bank solely for its confidential use. The bank's directors, in

keeping with their responsibilities both to depositors and to stockholders, should thoroughly review the report. However, under no circumstances shall the bank, or any of its directors, officers, or employees disclose or make public in any manner, the report or any portion thereof to any person or organization not officially connected with the bank as officer, director, employee, attorney, auditor, or independent auditor. Accordingly, such report shall not be made available to other banking institutions in connection with proposed transactions such as mergers and consolidations. Similarly, such report shall not be made available to a clearing house association. However, this Office has no objection to the voluntary disclosure by a bank of information concerning its affairs to such association where such disclosure is through reports prepared by the bank or by others at the request of the bank. See § 4.18 of this chapter.